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In the

SUPREME COURT OF THE UNITED STATES

No. [redacted], October Term, 1930

The Texas and Pacific Railway Company et al., Appellants,

vs.

The United States of America et al., Appellees.

JURISDICTIONAL STATEMENT FOR APPELLANTS UNDER RULE 12.

THOS. J. FREEMAN,
ESMOND PHELPS,
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Solicitors for Appellants.

WARLICK LAW PRINTING CO.—DALLAS

In the

SUPREME COURT OF THE UNITED STATES

No. 744, October Term, 1930

The Texas and Pacific Railway Company et al., Appellants,

vs.

The United States of America et al., Appellees.

JURISDICTIONAL STATEMENT FOR APPELLANTS UNDER RULE 12.

In support of the jurisdiction of this Court to review the above-entitled cause on appeal, the appellants respectfully represent:

A. The Statutory Provisions Sustaining Jurisdiction.

This is an appeal from the final judgment, 42 Fed. (2d.) 281, entered in the United States District Court for the Southern District of Texas, Galveston Division, composed of a Circuit Judge and two District Judges, in two certain causes, Nos. 186 and 187, In Equity, instituted by divers common carriers by rail, namely, The

Texas and Pacific Railway Company, Louisiana & Arkansas Railway Company, Louisiana Railway & Navigation Company, and Louisiana Railway & Navigation Company of Texas (now Louisiana, Arkansas & Texas Railway Company, duly substituted on motion as a party—Tr. 5264-67), seeking to enjoin, set aside, annul, and suspend, pursuant to the provisions of the Urgent Deficiencies Act of October 22, 1913, ch. 32, 38 Stat. 208, 219-220 (U. S. C., Tit. 28 §§ 41 [28], 47 and 47a), certain affirmative orders heretofore entered by the Interstate Commerce Commission other than for the payment of money.

This is a direct appeal taken from the aforesaid final decree pursuant to § 238 of the Judicial Code, as amended by the Act of February 13, 1925, ch. 229, 43 Stat. 936, 938 (U. S. C., Tit. 28 § 345).

B. Dates of Decree and of Application for Appeal.

The final decree sought to be reviewed was entered on June 30, 1930 (Tr. 5220-21).*

The Petition for Appeal was presented on Jnly 10, 1930 (Tr. 5247-49), together with an Assignment of Errors (Tr. 5222-46). An order granting the appeal

*References are made to pages of the certified unprinted transcript prepared by the Clerk of the District Court and on file with the Clerk of this Court, the record not yet having been printed.

was entered July 10, 1930 (Tr. 5251-54), the Appeal Bond was approved and filed on July 18, 1930 (Tr. 5255-59), and Citation to Appellees and Notice of Appeal to the Attorney General of Texas were respectively issued, and timely service thereof was duly acknowledged (Tr. 5314-22, 5260-63).

The time for completing the transcript and docketing the case in this Court was variously extended by the lower court to October 6, 1930, by order made July 28, 1930 (Tr. 5305), to December 31, 1930, by order made September 29, 1930 (Tr. 5307), to January 31, 1931, by order made December 24, 1930 (Tr. 5309), and to February 28, 1931, by order made January 24, 1931 (Tr. 5311), and the cause was docketed in this Court on February 18, 1931.

C. Nature of the Case and Rulings Below.

The petitioners in the court below, and included among the appellants in this Court, are four common carriers by rail which (or their predecessors in interest) were defendants in two certain complaints heretofore filed with the Interstate Commerce Commission, to wit, Nos. 12798 and 20685 on its docket, the complainant in No. 12798 being the Galveston Commercial Association (now the Galveston Chamber of Commerce), domi-

ciled in Galveston County, Texas, in the Southern District of Texas, Galveston Division, and the complainants in No. 20685 being the Cooper Grocery Company, the Shear Coffee Company, and the Waco Coffee Company, Inc., domiciled in McLennan County, Texas, in the Western District of Texas. Answers were duly filed in the District Court by the United States, defendant, and by the Interstate Commerce Commission, intervening defendant (Tr. 196, 200, 204, 211).

The appellants herein, among whom are included the New Orleans Joint Traffic Bureau and other parties who appeared as intervenors in the court below, have prosecuted this appeal from the aforesaid final decree of the lower court, consisting of three judges as provided by the Urgent Deficiencies Act, *supra*, which dismissed the respective petitions of the carrier appellants brought to enjoin, set aside, annul, and suspend those certain orders made and entered by the Interstate Commerce Commission, as described above, wherein the carriers defendant in cause No. 12798 before said Commission were directed and required to cease and desist, on or before the respective dates designated in said orders, and thereafter to abstain, from publishing, demanding, or collecting for the transportation in export, import, or coastwise movement, as the case may be, of the commodities specified in said orders, in carloads, rates from or to shipside at Galveston, Texas,

and other Texas ports taking the same rates, which reflect relationships with the contemporaneous rates from or to shipside at New Orleans, Louisiana, different from those prescribed therein, said orders further affirmatively requiring the carriers to establish, and thereafter to maintain and apply, to such transportation of the specified commodities in export, import, or coastwise movement, rates which shall meet and conform to the terms thereof; and wherein the carriers defendant in cause No. 20685 were required to cease and desist, on or before the date specified in said order, and thereafter to abstain, from publishing, demanding, or collecting for the transportation of green coffee, in carloads, from New Orleans, Louisiana, to Waco, Texas, a rate which shall exceed the rate contemporaneously maintained and applied on the same commodity from New Orleans, Louisiana, to Dallas and Fort Worth, Texas. Each of the orders of the Interstate Commerce Commission under review herein is set out in full in the appendices to the respective bills of complaint in the court below (Tr. 70-94, 165-189).

The effect of the aforesaid orders made and entered by said Commission in cause No. 12798 is to prohibit the petitioners in the court below, and such of their connecting lines of railway as are willing to join with them in doing so, from publishing voluntarily, in the exercise of managerial discretion, rates to and from

shipside at New Orleans, Louisiana, for the inland rail transportation in export, import, or coastwise movement, as the case may be, of the commodities in issue which will provide and maintain combination rail and water rates on such traffic through the port of New Orleans which are the same as the combination rail and water rates contemporaneously maintained thereon from and to the same points of origin and ultimate destination through the port of Galveston, Texas, and/or other Texas gulf ports.

The effect of the aforesaid order made and entered by said Commission in cause No. 20685 is to prohibit the petitioners in the court below from publishing import rates on green coffee, in carloads, from shipside at New Orleans, Louisiana, to Dallas and Fort Worth, Texas, which shall be the same as the import rate contemporaneously maintained by competing lines of railway from shipside at Galveston, Texas, or any of the other Texas gulf ports, to Dallas and Fort Worth, Texas, so long as the rate on green coffee, in carloads, published and maintained by their competing lines of railway from shipside at New Orleans, Louisiana, to Waco, Texas, shall be in excess of the rate contemporaneously published and maintained on said commodity, in carloads, from shipside at Galveston, Texas, or any other Texas gulf port, to Dallas and Fort Worth, Texas.

D. Cases Sustaining the Jurisdiction of This Appeal.

It is submitted that the following decisions of this Court sustain the jurisdiction of this appeal.

Louisville & Nashville R. R. Co. v. United States, 238 U. S. 1;

Peoria, etc., R. Co. v. United States, 263 U. S. 528, 535-36.

Chicago Junction Case, 264 U. S. 258;

Virginian Ry. Co. v. United States, 272 U. S. 658, 663;

St. Louis & O'Fallon Ry. Co. v. United States, 279 U. S. 461, 482.

Florida v. United States, ...U. S. ....., 75 L. ed. (Adv. Ops.) 212.

We respectfully submit that this Court has jurisdiction of this appeal by virtue of § 238 of the Judicial Code, as amended by the Act of February 13, 1925.

Respectfully submitted,

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